

APPEAL NO. 041019
FILED JUNE 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 5, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability. The claimant appealed, arguing that the determinations are so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust and should be reversed. The claimant argues that the hearing officer did not act with neutrality and utmost impartiality as is required and wrongly relied on evidence which was not accurate. The appeal file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the issue of whether the claimant sustained a compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The claimant contends that the hearing officer "did not act with neutrality and utmost impartiality as is required and wrongly relied on some evidence, which was not accurate." The record does not reveal hearing officer bias nor does it reveal the hearing officer's decision was based on anything other than her impartial credibility determinations. The claimant argues that the hearing officer placed too much emphasis on things not specifically explained in the emergency room records and argues the hearing officer mistakenly interprets the records because she noted in her Background Information that "w/c" was not checked on the referenced emergency room records. The claimant argues that the "w/c" referred to by the hearing officer does not stand for workers' compensation but rather wheel chair. We note that the same records relate the context of the injury as a "twisting injury" but do not reflect it as work related despite the fact that "work related" was specifically listed as an option on the same form. The claimant further argues that the hearing officer based her opinion in part on testimony of Mr. V given at the hearing which was discredited by the written statement of Mr. V. We

disagree. A review of the records reflects that Mr. V explained what the claimant alleges is a contradiction between his testimony and his statement. It was not error for the hearing officer to decide to believe the explanation given by Mr. V rather than the argument advanced by the claimant at the CCH and on appeal. The hearing officer noted that the claimant's evidence was inconsistent and conflicting and was therefore not persuasive. These were matters within the purview of the hearing officer to resolve. She did so and there is sufficient evidence to support the determinations of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CRAWFORD & COMPANY
505 EAST HUNTLAND DRIVE, SUITE 100
AUSTIN, TEXAS 78752.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge